
FAMILY AND MEDICAL LEAVE ACT

Purpose:

To establish policy and procedures for family and medical leave in accordance with the Family and Medical Leave Act (FMLA).

Additional Authority:

Family and Medical Leave Act

Scope:

Applies to all University employees.

Responsible Party:

Human Resource Services, 426-1616

POLICY

- I. The purpose of the Family and Medical Leave Act (FMLA) is to assist employees in balancing work life and family matters by providing leave for special health or family related needs. Employees who qualify are entitled to take up to 12 weeks of unpaid, job protected leave each year. The employee may choose to use appropriate accrued paid leave or leave without pay for absence granted in accordance with the Family and Medical Leave Act. In the event an employee does not request FMLA leave for time off work for a qualifying health condition, Boise State University will designate the employee's absence as FMLA leave (as appropriate).

Amendments to the FMLA by the National Defense Authorization Act for FY2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness.

A. Eligibility for FMLA Leave

An employee may take FMLA leave if s/he meets both of the following criteria:

1. Employment with the State of Idaho has been in effect **for at least twelve (12) months**. The twelve months do not have to be continuous employment. Employees who were on the payroll for any part of a week will be credited with a full week toward their total. This includes part-time or temporary workers. If an employee has a break in service of more than seven (7) years, time worked prior to rehire/reinstatement following that break in service does not count towards the twelve-month eligibility requirement (unless the break in service was due to the employee's National Guard or Reserve military service obligations); and
2. Has worked **at least 1,250 hours** during the immediately preceding twelve-month period. This 1,250 hours means "actual time" spent working. It does not include paid vacation or sick time, nor periods of unpaid leave during which other benefits (i.e., a group health plan or workers compensation) continue to be provided by the employer.

B. Use of Paid Leave

An employee may use vacation, sick or other paid leave they are entitled to concurrent with their FMLA leave.

C. Manner of Calculating the Year for 12 Week Entitlement

The State of Idaho, for the purposes of calculating the "12-month period", uses a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the amount of leave the employee has taken under this policy in the past 12 months will be computed and subtracted from the available 12 weeks of leave. The balance remaining is the amount the employee is entitled to take at that time.

D. Purposes for FMLA Leave

1. The FMLA provides leave to employees for the following reasons:
 - a. Birth of a child.
 - 1) FMLA leave to care for or assist in the care of a newborn is available to all employees (male and female) as long as they are the parents or legal guardians of the child.

- 2) An expectant mother may take FMLA leave if her pregnancy makes her unable to work before the birth of the baby. Under the FMLA, pregnancy and prenatal care involve continuing treatment by a health care provider and therefore qualify as a serious health condition.
 - b. An employee's right to take leave for birth and care of a newborn must conclude within 12 months of the birth or placement. Employees may only use sick leave for the first six weeks after the birth of the child unless the mother or child has a serious health condition. The health care provider would determine the amount of sick leave usage allowed. The remainder may be taken as annual leave or as unpaid leave.
2. Adoption of a child or placement of a child in foster care
 - a. FMLA leave may be taken for events incident to the adoption process such as pre-placement counseling sessions, court appearances, attorney consultations, adoption or foster care placement, and care for adopted or foster child.
 - b. FMLA leave may be taken in conjunction with the placement of a child in foster care.
 - c. FMLA regulations governing adoptions are complex. Please contact Human Resource Services for guidance.
 - d. An employee's right to take leave for placement of a child for adoption or foster care must conclude within 12 months of the placement.
3. To care for employee's spouse, children (under 18 or older if incapable of self-care due to mental or physical disability) or parents who have serious health condition. (Does not include siblings or in-laws). If employees request FMLA leave to care for family members, the employer will require a doctor's certification stating the need for support or care for the family member's illness, as well as its expected duration.
4. FMLA leave is available for the employee's own serious health condition.
5. Qualifying Exigency Leave. Eligible employees with a spouse, son, daughter, or parent on active duty or on call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address

certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

6. **Military Caregiver Leave.** Permits an employee who is the spouse, parent, child, or next of kin (Next of kin is defined as: The nearest blood relative of the service member, other than the service member's spouse, parent, son or daughter) to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his/her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.
 - a. **Limitations.** Military Caregiver Leave shall only be available during a single 12-month period.

E. Definition of "Serious Health Condition"

A "serious health condition" means an illness, injury, impairment or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

A period of incapacity that also involves treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy or prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-chronic Conditions)

Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity if not treated, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

7. Serious Injury or Illness for members of the Armed Forces

The term "serious injury or illness", in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

F. FMLA procedures

1. Where the employee knows in advance of the need to take FMLA leave.
 - a. An employee who knows in advance that they will take FMLA leave must give 30 days notice prior to taking such leave. Such

notice would include the anticipated start date of such leave and the expected duration.

- b. In situations where advance notice is not possible, the employee shall notify the employer as soon as feasible. As soon as feasible ordinarily would mean employees giving at least verbal notice one to two days after the employee knows of their need for FMLA leave.
- c. Whenever an employee requests or needs FMLA leave, the employee shall complete and submit to Human Resource Services the FMLA Leave Request Form. If the employee is not able to fill out this form, the supervisor, acting on the employee's behalf, may complete it.

2. When it is impossible to provide advance notice

If the employee is unable to provide notice because of unforeseen circumstances, an employee's friend or family member, acting on the employee's behalf, can notify the employer of the employee's need to take FMLA leave. Such notice can be given by a phone call, fax or by e-mail. However, as soon as such notice is given, the employee's supervisor shall either immediately complete the FMLA Leave Request Form or ensure the form is given directly to the employee.

3. FMLA Notice Letter

- a. When an employee requests FMLA leave, the employer will provide a preliminary eligibility response (either verbal or written). In all cases where the employee or his/her representative requests FMLA leave, Human Resource Services will either send or deliver to the employee within five (5) days, the Response to FMLA Request Form.
- b. The supervisor, Human Resource Services staff, or other designated individuals are encouraged to provide employees information about the availability of FMLA leave whenever a situation arises that would indicate that the employee may be eligible for, and might benefit from FMLA leave. Such notice may be verbal but is normally given by providing the FMLA Leave Request Form.
- c. An employee will be required to provide a fitness for duty certification from their medical practitioner upon their return.

4. Certification Requirement (Proof of Medical Necessity)

- a. When an employee requests FMLA leave for their own medical condition or to care for family members, BSU will require the employee to furnish a doctor's statement certifying the medical information necessary to determine the employee's eligibility for FMLA leave at the time such leave is requested. The employee must return the completed medical documentation within 15 days from the date s/he makes the request for leave, unless a request for extension is received and approved. If an employee fails to provide medical documentation, FMLA leave may be denied.
- b. If the requested FMLA leave is unforeseen, the employer will request certification after the leave commences. The employee or their representative should then provide the certification within 15 days of the receipt of the request.
- c. To determine the extent of an employee's serious health condition, if the first medical certification appears to lack validity, the employer has the right to request a second opinion. If the second opinion is different from the first opinion, the employer can request a third medical opinion. The third opinion will be binding. If second and third opinions are necessary, the employer will pay the expense.

5. Procedures for Coding FMLA Leave

- a. Employees should not code leave to their timesheet until the employer has verified the employee's eligibility for such leave. Such verification can be either orally or in writing.
- b. Sick leave taken during FMLA leave is coded as FMS; vacation leave taken during FMLA leave is coded as FMV. If the employee runs out of sick and vacation leave, the remainder of the 12-week period is coded as FML, which is leave without pay.
- c. Employees on FMLA leave who are concurrently using available sick or vacation time will accrue sick and vacation hours at the same rate as if they were not on FMLA. However, once an employee goes on FML, they no longer accrue leave credits.
- d. Employees qualifying for Exigency Leave will use FMS for sick leave and FMV for vacation leave. If all leave is exhausted, the remainder of the 12-week period is coded as FML.

- e. Military caregivers will code sick leave taken as FSS; vacation leave is coded as FSV. If the employee runs out of sick and vacation leave, the remainder of the time is coded as FSL, which is leave without pay.

G. Employee's FMLA Rights

While on FMLA leave, the employee's health benefits will remain unchanged. Thus, the employee will still be responsible for his/her share of the monthly premiums. As long as the employee is using sick or vacation leave balances to receive a full paycheck while on FMLA leave, the employee's portion of health and dental insurance premiums will be deducted from the paychecks as usual. However, if the employee is not receiving a sufficient paycheck, s/he must arrange to pay the employee's portion of the medical insurance premium. If the employee does not return to work after FMLA leave for reasons beyond his/her medical condition, the employer can require the employee to reimburse the State's share of the premiums paid during his/her absence.

1. An employee's use of FMLA leave cannot result in the loss of any employment benefits that the employee earned or was entitled to before using FMLA leave.
2. Use of FMLA leave cannot be counted against the employee for any disciplinary action regarding attendance.
3. Upon return from FMLA leave, employees are entitled to be restored to the position they held prior to their FMLA leave, or to be restored to a substantially equivalent position with substantially equivalent benefits, pay, or other terms and conditions of employment.

H. Worker's Compensation

If an employee on worker's compensation leave is approved for modified or light duty work but remains qualified for FMLA leave, s/he may still choose not to work and to instead use FMLA leave. However, refusal of the modified or light duty work may lead to loss of worker's compensation benefits.

I. Intermittent Leave

Examples of allowable intermittent FMLA leave include, but are not limited to, transporting a family member to a medical care facility, filling

in for primary caregivers, making arrangements for changes in care, periodic medical treatments, or episodic chronic illnesses. Employees on intermittent leave may be temporarily transferred to another similar position if the transfer helps to accommodate the employee's intermittent leave until the need for intermittent leave no longer exists.

Intermittent FMLA leave is available for the birth or adoption of a child, but only with the employer approval. If the leave is for the birth of a child, sick leave can only be used for the first six (6) weeks of leave unless the mother or child has a serious health condition. The health care provider would then determine the period of sick leave usage. After 6 weeks, the use of vacation leave, compensatory time, or leave without pay is allowed. If the leave is for an adoption or placement of a foster child, please contact Human Resource Services for guidance.

Employees requesting intermittent leave or reduced hours should schedule their leave so as to disrupt the employer's operations as little as possible. Employees taking intermittent leave should, when possible, submit a schedule disclosing their planned leave. Only the amount of leave actually taken may be counted toward the 12 weeks to which employees are entitled.

J. Areas Not Covered in Policy

1. This policy is not intended to be all-inclusive. The exceptions and unique situations regarding FMLA benefits are too numerous and complex to address in this policy alone. Consultation with Human Resource Services or Legal is strongly advised for situations that involve:
 - a) Key employees – salaried employees among the highest paid top 10% of all employees;
 - b) Reinstatement issues;
 - c) The need for recertification from a qualified health care provider for a FMLA qualified absence;
 - d) Any concurrent ADA or Worker's Compensation situation;
 - e) Caring for a child who is 18 or older;
 - f) Discipline of employees where FMLA leave circumstances may be an issue;
 - g) An employee's request for light duty or intermittent leave; or,
 - h) Any other unusual FMLA leave situations.